

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TITO ARGUETA FOLGAR,)	
)	
Petitioner,)	Civil Action No. 20-92J
)	District Judge Robert J. Colville
vs.)	Magistrate Judge Maureen P. Kelly
)	
MOSHANNON VALLEY)	
CORRECTIONAL FACILITY and U.S.)	
ATTORNEY FOR THE WESTERN)	
DISTRICT OF PENNSYLVANIA,)	
)	
Respondents.)	

ORDER OF COURT

Currently pending before the Court is the June 22, 2022 Report and Recommendation (ECF No. 17) issued by Magistrate Judge Maureen P. Kelly. Judge Kelly's Report and Recommendation recommends that the that this case be dismissed for failure to prosecute, and that a certificate of appealability be denied. Objections to Judge Kelly's Report and Recommendation were due by July 11, 2022. No objections were filed, and this matter is ripe for disposition.

Objections to a magistrate judge's disposition of a dispositive matter are subject to de novo review before the district judge. 28 U.S.C. § 636(b)(1)(B)-(C); Fed. R. Civ. P. 72(b)(3). The reviewing district court must make a de novo determination of those portions of the magistrate judge's report and recommendation to which objections are made. *Id.* Following de novo review, "[t]he district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3). The United States Court of Appeals for the Third Circuit has explained that, "even absent objections to the report and recommendation, a district court should 'afford some level of review

to dispositive legal issues raised by the report,” and has “described this level of review as ‘reasoned consideration.’” *Equal Employment Opportunity Comm’n v. City of Long Branch*, 866 F.3d 93, 100 (3d Cir. 2017) (quoting *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987)).

Upon reasoned consideration of Judge Kelly’s June 22, 2022 Report and Recommendation, and following a review of the record in this matter, it is hereby ORDERED as follows:

The Court hereby accepts and adopts Judge Kelly’s Report and Recommendation as the opinion of the Court in this matter, and this action is hereby dismissed with prejudice for failure to prosecute.

The Court finds that, because jurists of reason would not find it debatable whether Petitioner’s claims should be dismissed, Petitioner is not entitled to the issuance of a certificate of appealability. The denial of a certificate of appealability does not prevent Petitioner from appealing the order denying his petition so long as he seeks, and obtains, a certificate of appealability, from the court of appeals. *See* Fed.R.App.P. 22(b)(1), (2). The Clerk of Court shall mark this case CLOSED.

BY THE COURT:

s/Robert J. Colville
Robert J. Colville
United States District Judge

DATED: July 26, 2022

cc:

The Honorable Maureen P. Kelly
United States Magistrate Judge

All counsel of record

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